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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,307	12/12/2003	Steven Johnson	840468605001	4351

41498 7590 06/18/2008
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EXAMINER	
NEGRON, WANDA M	

ART UNIT	PAPER NUMBER
2622	

MAIL DATE	DELIVERY MODE
06/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/735,307	JOHNSON, STEVEN	
	Examiner	Art Unit	
	WANDA M. NEGRON	2622	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-12,14, 16, 17, and 19-53*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation sheet.

/David L. Ometz/
Supervisory Patent Examiner, Art Unit 2622

Applicant's arguments have been fully considered but they are not persuasive.

In response to applicant's argument that Kuwano does not disclose the limitation of a video processor for "determining which image frames to save in the memory based on receiving a motion indication", it is respectfully submitted that said limitation was reasonably interpreted by the examiner as determining when to record image frames (from a plurality of captured image frames) in the memory on the basis of a motion indication. Furthermore, even if the claim would have been narrowly interpreted, as suggested by applicant on page 21 of the remarks, Kuwano also discloses automatically starting and stopping recording of image frames until motion is not present in the scene being captured (see col. 7, lines 18-33 and figure 9, steps 14-20).

In response to applicant's argument that the examiner's rationale for combining the references is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the examiner's motivation for combining the references was to minimize recording time which decreases the memory space used for storage, and to alert a supervising individual only when necessary. On the other hand, the specification as filed discloses different motivations for locally storing image frames wherein motion has been detected. First, when a transmission is not authorized, motion video data can be saved locally and transmitted at a later time (see page 32, lines 19-23). A second motivation for storing motion data locally is to "save video image data if the network goes down" (see page 32, lines 24-25). Therefore, it is respectfully submitted that the examiner did not engage in impermissible hindsight reconstruction in the previous rejection of claim 1.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Zustak discloses the use of the invention for surveillance of a property and surveillance of a person (see paragraph [0042]), which would reasonably suggest to an ordinarily skilled artisan examining motion within the scene being captured for monitoring purposes. In addition, it is well known in the art that recording image frames only when motion is detected minimizes use of memory space since it would prevent storing image frames captured wherein the scene has not changed. The second motivation for combining the references, i.e., to alert a supervising individual only when necessary, i.e., only when motion is detected, is disclosed by Kuwano (see abstract).

In response to applicant's seasonable traversal of the official notice taken for the limitations of claim 24, the examiner presents Yoshida et al. (see col. 1, 11-66). In order to perform retransmission of data, the previously transmitted data is stored in memory (see col. 8, lines 48-59).

For purposes of appeal, amended claim 19 would be rejected as being unpatentable over Zustak et al. (US Application Publication No. 2002/0104098) as discussed in the previous Office action, and further in view of Kuwano et al. (US Patent No. 6,456,320). Kuwano et al., as previously discussed in the last Office action, discloses a memory wherein sensory electrical signals are stored as data, i.e. digital recording device 204, a motion detector, i.e. monitoring control device 206, and a video processor, i.e. monitoring control device 206. Furthermore, Kuwano et al. discloses detecting motion and issuing a motion indication; determining which frames to save as data in memory based on the motion indication; capturing a first image frame from the surveillance area and converting the first captured image frame to video sensory electrical signals; capturing a second image frame from the surveillance area and converting the second captured image frame to video sensory electrical signals; receiving a motion indication; saving the second captured image frame to the memory and the newly added limitations (see col. 7, lines 18-33 and figure 9, steps 14-20). The rationale for combining the references would remain the same as that recited in the previous Office action.

For the foregoing reasons, the previous rejection is still deemed proper and the position of record has been maintained.